

ABSTRACT. The Examiner has not established the required *prima facie* case of obviousness; there has been no articulated reasoning with rational underpinning why one skilled in the art would modify the disposable wiping article described in Nissing to produce the claimed invention, and the prior art is not reasonably pertinent to the particular problem with which the inventor was concerned.

The Examiner asserts that because Nissing teaches a film layer made of polypropylene or polyethylene and because these polymers can be elastic, Nissing's film layer would inherently have some degree of elasticity. This assertion ignores the significant number of polypropylene and polyethylene varieties, each with their own structure and properties. Those skilled in the art know that polypropylene can be used for such diverse purposes as clothing to electrical cables, while polyethylene can be used in a range of applications from plastic bags to plumbing systems. Few types of polyethylene and polypropylene polymers are elastic, and there is no indication in Nissing that a film layer would be elastic. Applicants address this by specifying suitable elastic polymers for use in the film layer of the claimed invention. *See* paragraph [0076] of the specification as originally filed. Nissing does not specify types of polyethylene or polypropylene. "The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." *See In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993)(emphasis in original); MPEP § 2112 IV. "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.'" *See In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999); MPEP § 2112 IV. Those skilled in the art would recognize that elastic polymers are not necessarily present in the film layer of the cited prior art. In fact, Nissing relies on the film layer to have